

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN AVILA GUTIERREZ,

Petitioner,

v.

WARDEN, F.C.I. HERLONG,

Respondent.

No. 2:23-cv-00646-DAD-AC (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION FOR FAILURE TO
STATE A COGNIZABLE CLAIM

(Doc. No. 8)

Petitioner Juan Avila Gutierrez is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 24, 2023, the assigned magistrate judge screened the pending petition, found that it failed to state a cognizable claim for relief under 28 U.S.C. § 2241, and granted petitioner leave to file an amended federal habeas petition to attempt to cure the noted deficiencies within thirty days. (Doc. No. 6 at 2–3.) Petitioner was specifically warned that his failure to file an amended petition would result in a recommendation that this action be dismissed. (*Id.* at 3.) Petitioner did not file an amended petition within the time provided. Nonetheless, on July 17, 2023, the magistrate judge issued an order granting petitioner twenty-one days from the date of that order to file an amended petition and again warning him that his failure to do so would result in a

1 recommendation that this action be dismissed. (Doc. No. 7.) Once again, petitioner did not file
2 an amended petition and did not respond in any way to the court's order.

3 Consequently, on September 11, 2023, the magistrate judge issued the pending findings
4 and recommendations recommending that petitioner's federal habeas petition be dismissed for
5 failure to state a cognizable claim for relief under 28 U.S.C. § 2241. (Doc. No. 8.) Those
6 findings and recommendations were served upon the parties and contained notice that any
7 objections thereto were to be filed within fourteen days after service. (*Id.* at 2.) To date,
8 petitioner has not filed any objections to the pending findings and recommendations and the time
9 in which to do so has long since passed.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
11 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
12 pending findings and recommendations are supported by the record and proper analysis.

13 Accordingly,

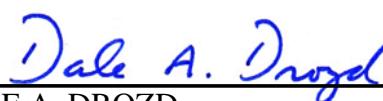
14 1. The findings and recommendations issued on September 11, 2023 (Doc. No. 8) are
15 adopted in full;

16 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed due to petitioner's
17 failure to state a cognizable claim under 28 U.S.C. § 2241¹; and

18 3. The Clerk of the Court is directed to close this case.

19 IT IS SO ORDERED.

20 Dated: December 11, 2023


DALE A. DROZD
UNITED STATES DISTRICT JUDGE

26 ¹ Because petitioner is a federal prisoner bringing a § 2241 petition, a certificate of appealability
27 is not required. *See Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) ("The plain language
28 of [28 U.S.C.] § 2253(c)(1) does not require a petitioner to obtain a COA in order to appeal the
denial of a § 2241 petition.").